
BOARD OF ADJUSTMENT
October 10, 2006
Minutes

Members Present: Scott Hay
 Rick Waldruff
 Morton Langholtz

Members Absent: Wayne Bradshaw
 David Hejl

Alternates Present: Tim Cook
 Brenda Coleman

Staff Present: Justin Fortney, Planner I
 Gloria Brownell, Planner I
 Jeff Armstrong, Development Services Manager
 Rodney Fletcher, Permit Specialist
 Dan Santee, Assistant City Attorney

Mr. Hay, Acting Chair, called the meeting to order at 8:38 AM and declared a quorum present.

The minutes from the meeting on September 12, 2006 were unanimously approved.

Agenda Item BA-2006-54, Request for a 10' variance from the 10' setback requirement for fences from streets on property located at 5 Woodhaven Circle.

Mr. Fortney presented the staff report. Mr. Fortney discussed the two letters from the Abilene Fire Department, one from Capt. Rick Wright to the applicant indicating that the fence should not be a problem and one from Ed Williams, Fire Marshall, stating that the fence is in violation due to its proximity to a fire hydrant. Mr. Fortney stated that the Fire Marshall's letter ruled in this matter. The request does not meet the criteria necessary to approve a variance.

Staff recommended denial of the request. Two comment forms were received in favor and seven in opposition.

Mr. Hay opened the public hearing. Mrs. Karen MacDonald, applicant, began by stating that she has a list of names and asked that Board members not participate if they know any of the people. She began to read the list and Mr. Santee said that the Board is aware of when they are statutorily required to not participate and that the Board has a list of property owners in the notification area, so she should move on to her other comments. Mrs. MacDonald clarified that the alley is blocked off and that where it is behind their homes it is private. She provided background information regarding ownership, construction and deed restrictions for the subdivision. She indicated that Southwest Pools contacted the City about placing a pool on the property and that they were only told that the pool had to be 10 feet from the property line, but that there was no

mention of the fence requirement. Ultimately, they decided to not install a pool, but wanted the fence to create a lawn area. They contacted licensed, bonded fence contractors in Abilene about installing the fence and none of them mentioned the ten feet. Someone from Building Inspections stopped by during the fence construction to ask about a possible carport, but did not mention anything about the fence. She described the nature of the subdivision and showed numerous pictures of the area and the subject fence. She said it is a professional fence made of quality materials. In terms of peculiarities she stated that it is zoned RM-3 and RS-6, they are large homes on small lots, it is a private drive, platted in 1977 with designated setbacks, most of the homes were built in the 1980's, and there are other violations in the subdivision including building setbacks, the alley width, and the brick walls at the entrance. Most homes are ten feet from the edge of the road. Their lot is unusual in that it extends 40 feet into the street, is 7,140 square feet, 1,120 square feet of which is street pavement. The lot gives up 10 feet more to the street than other lots along the street. Regarding hardship she discussed phone conversations and letters from the Fire Department regarding the ability to provide fire protection with the fence in place. It's a dead end street. I have seen no pedestrians since I have lived there. Numbers 4, 5, and 6 are the only lots with sidewalks, which are 3' wide. We are willing to move the fence 11 inches to comply with the 36" separation from the fire hydrant. Indicated perceived inconsistencies in City regulations between what Section D, #5 of the Subdivision Regulations say and what the Zoning Ordinance says about the front setback requirement.

Ms. Coleman asked if the fire truck was able to turn safely. Ms. MacDonald said yes and that they were more concerned with trees being in the way.

Ms. Molly Cline, #9 Woodhaven Cir. stated that all the residents in attendance are opposed and asked if the Board had received their letter. The Board acknowledged that they had the letter.

Mr. Hay closed the public hearing. Mr. Cook asked if any new construction has to meet current standards. Mr. Armstrong said "yes." Mr. Langholtz stated that it is hard to judge the inconsistent Fire Department letters and asked if the Fire Marshall has the authority. Mr. Hay asked how deed restrictions apply to this. Mr. Santee stated that the City does not get involved with deed restrictions, that homeowners must enforce them. He also stated that the Fire Marshall has the authority. The fire fighters can go through things and move things, but the Fire Marshall must uphold the letter of the law regarding the fire codes.

Mr. Hay reopened the public hearing. Mr. MacDonald stated that the fire department brought their biggest tanker ladder truck from Station #6 to check the access and that the fence is consistent with the neighbor's fence.

Patricia Redwine, #7 Glenhaven Cir. stated that she saw the fire truck and it had to back up three times to get around the circle. Mr. Cook asked if they would have hit the fence if they had not backed up. Ms. Redwine said she did not know.

Ms. Cline said the radius of the circle is 30 feet and that 50 feet is the current requirement. Mr. Langholtz asked if anyone talked to the city about it while it was being built. Ms. Cline said no, not until later.

Mr. Hay closed the public hearing. Ms. Coleman stated that there are plenty of peculiarities. Mr. Langholtz said that the peculiarities pertain to the house itself. The fence was after the fact. He thinks that people are concerned about the appearance, but it is also a safety issue. Mr. Santee restated the applicant's willingness to move the fence to comply with the distance from the fire hydrant. Mr. Waldruff agreed that there are peculiarities. Mr. Cook stated that it is a private, not a public street. Mr. Waldruff said that the applicant said that the yard is limited. Patio homes just don't have yards – I struggle with that. Mr. Hay said the Fire Marshall responded to a request for clarification from staff. Mr. Hay asked why staff did not forward the letter to the applicant. Mr. Fortney said that the letter was to Planning and that it was included in the normal correspondence with the applicant. Mr. Hay said the property has specific peculiarities, but has a hard time with a hardship. Eighteen feet is the average patio home yard. In terms of safety, the fence could be moved to comply. Mr. Cook concurred. Mr. Waldruff said that for number 1 it is peculiar, number 2 there is no hardship, and number 3 the Fire Marshall's letter matters, but am stuck on number 2. Mr. Santee reminded the Board that some findings can support the request and some not, but that it must meet all three criteria.

Mr. Hay reopened the public hearing. Ms. MacDonald said that the house was not sold as a patio home and that the property has a variety of zoning.

Kay Spiva, a local Realtor, stated that she is not in the notification area, but that if her company had a listing for a home on this street they would definitely market it as a patio home.

Mr. Fortney clarified the patio home regulations and stated that actual patio home sizes vary greatly.

Mr. Langholtz said that the hardship issue is difficult to overcome.

Mr. Hay closed the public hearing.

Mr. Langholtz made a motion to deny the request based on the following findings:

Unique Conditions of the Property: The property is peculiar based on the information provided to the Board by the property owner.

Hardship from Strict Interpretation: Could not find a hardship.

Effect on Public Health, Safety and Welfare: Concerned about the safety aspects.

Mr. Waldruff seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2006-55, Request for a Special Exception to locate a carport on the front setback on property located at 325 Westview Dr.

Gloria Brownell indicated that there was to be two parts to this request, a special exception and a variance. Both were indicated in the mail-out letters to property owners, but the variance was

inadvertently left off of the posted agenda. The special exception request can still go forward, but the variance can not. Both requests could be considered by the Board next month.

Mr. Hay asked the applicant if they wanted to proceed with only the special exception today. The applicant, Mr. Harold Butler, indicated that he would prefer to have both considered at the same time at the next meeting. Dan Santee advised the Board to have the applicant come forward and request the withdrawal on the record. Ms. Brownell clarified various options that the applicant has. Mr. Butler stated that he is not sure how far the driveway is from the side property line currently and that he wants to put the posts next to the driveway. Mr. Hay stated that he needs to get a surveyor to determine the location of the property line and asked Mr. Butler if he wanted to go forward with the special exception. Mr. Butler stated that it is hard to know without the exact dimensions.

Mr. Langholtz made a motion to table the request:

Mr. Cook seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2006-56, Request for a 7' variance from the 15' interior side setback requirement for an addition to a residence on property located at 1427 Tanglewood Road.

Ms. Brownell presented the staff report. The applicant wants to add a bathroom to the master bedroom. To meet the side setback would require the removal of a large oak tree. Also there is room on the other side of the lot, but then the bathroom could only be accessed through the garage. The neighboring property on that side has their driveway along the property line, so there will be good separation from the neighboring home. It will hardly be visible from the street.

Staff recommended approval since it meets the criteria for a variance. Three comment forms were received in favor of the request and none in opposition. .

Mr. Hay opened the public hearing. Ms. Jean Goodnight, applicant, spoke in favor. She stated that the staff did a good job explaining the situation and that the tree needs to be saved. Mr. Hay closed the public hearing.

Mr. Langholtz made a motion to approve the request, based on the following findings:

Unique Conditions of the Property: There are very large oak trees located directly behind the home on the subject parcel. The location of the trees and their associated root structure limit the size and arrangement of available locations for the proposed addition.

Hardship From Strict Interpretation: The trees represent an immovable obstacle unless they are completely removed. The proposed addition could be shifted 7 feet further onto the subject parcel and constructed in full compliance if the trees did not limit the available space.

Effect on Public Health, Safety, and Welfare: The Board foresees no negative effects on public health, safety, or welfare from a variance at this location. The substantial amount of vegetation on the subject parcel will screen the addition from view from the street, preserving the open character of the surrounding neighborhood. Furthermore, the adjacent home is built 33 feet from the shared property line due to the driveway serving that property, which provides substantial space between the existing and proposed structures.

Mr. Cook seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2006-57, Request for a 1-acre variance from the 2-acre minimum lot size requirement in AO zoning, on property located at 3710 East Lake Rd.

Mr. Fortney presented the staff report and explained the applicant's circumstances. The applicant has also requested rezoning of the property, which would resolve the issue. The rezoning request was denied by the Planning and Zoning Commission and is pending appeal with the City Council.

Staff recommended denial of the request. The request only meets the criteria of not having an effect on the public health, safety and welfare. Two comment forms were returned in favor, one opposed from out of the notification area, and one phone call was received in opposition.

Mr. Hay opened the public hearing. Mr. Joe New, applicant, explained how he got to this point. He contacted the City and was told the land was in the county. My original contract was for 2 acres, but the City said that only one acre is required and I could use a septic system, so I renegotiated the contract for only one acre. I called to get 911 address to use for the permit for the septic. I want to obey the laws and be a good neighbor. Access to the lot has been arranged with the adjacent property owner. My hardship is that I was conveyed a property that is now worthless. Mr. Armstrong told me that there are problems in the city with land being sold without all of the proper replatting and that causes these problems. There is lots of RS zoning in the area on the east side of the road. I and the City have ownership in this problem. Mr. Langholtz asked if he plans to appeal the rezoning. Mr. New said I will see it through regardless of your decision today. Ms. Coleman asked why he can't just buy one more acre. Mr. New said he can financially, but used interim financing and can't go back to the bank now. It is easier to buy on interim. Mr. Hay said it sounds to me like a non-financial hardship and there is no effect on the health, safety or welfare and asked Mr. New what is peculiar about the property? Mr. New stated that TxDOT would not allow him to have his own driveway. Mr. Waldruff stated that if he bought the extra acre, could he not stay in compliance with his current loan. The comment was made that the property will have to be platted.

Anita Hill, 3650 East Lake Rd. spoke in opposition. She shares the road where access would be taken. She is concerned about the precedent of one-acre lots in the area and that her septic system takes up an entire acre itself. She said that the other side of the street is a planned development, but there is no plan for this side, so nobody has any idea what might happen around them.

Max King, 3849 East Lake Rd., spoke in opposition. He said he has not been able to hear most of what has been said, but has lived on his property for 43 years. He wants Mr. New in town. He is a good man. There are houses nearby that would suit his needs. Mr. King said he has 160 acres that his son will inherit.

Mr. New said that there are already 6000 and 12,000 square feet lots in the area. He called about sewer to the property and was told by Kenneth Mathers of the Water Department that it is 2200 feet to the nearest sewer line.

Mr. King said that of his 160 acres, some is in the City and some is out. There are 2 houses on the property and when it rains a lot, you can not flush the commodes. Doesn't want too many houses on septic crowded together.

Michael Malm, spoke in favor of the request. He has built homes in Heritage Parks. There is solid rock in the area, but is sure there were percolation tests done for the septic. He does not see a problem with the request.

Mr. Hay closed the public hearing. Mr. Langholtz indicated that he has other recourse and hates to usurp the City Council's ability to decide.

Mr. Armstrong explained the circumstances related to providing septic or city sewer to the site. Substantial development will require connection to the City's sewer system. Also, the problem of the lack of communication within the City regarding septic permits has been fixed.

Mr. Santee asked Mr. Armstrong for clarification on the timeline for appeals. Mr. Armstrong stated that the applicant has until October 12th to appeal the rezoning request to the City Council and would have until October 20th to appeal a decision of the Board of Adjustment to a court of record.

Mr. Langholtz asked other Board members if they should table the request until the Council makes a decision. Mr. Hay stated that he thinks the Board should make a decision independently based on the criteria and that they have enough information to do so.

Mr. Waldruff stated that there is nothing peculiar about the property and that there would be no effect on the public health, safety, or welfare. Mr. Hay agreed.

Mr. Waldruff made a motion to deny the request based on the following findings:

Unique Conditions of the Property: The parcel meets the minimum length and width requirements but is only one acre in total size, while the minimum requirement is two acres. The applicant recently bought one acre out of a 160 acre parcel before finding out that two acres is the minimum size of a lot in AO.

Hardship From Strict Interpretation: This situation is a self created hardship because the applicant did not purchase enough property to plat a lot. Since the hardship was created by the applicant, staff believes that it is not a legitimate hardship that would justify a variance. This also

may be a financial hardship because the applicant could buy another acre rather than applying for a variance.

Effect on Public Health, Safety, and Welfare: A one acre variance to the minimum lot size of this parcel would not have a negative impact on public health, safety, or welfare.

Ms. Coleman seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2006-58, Request for (1) a 3' variance from the 7' maximum fence height along the east property line, (2) a 7.5' variance from the maximum 2.5' maximum opaque fence height in the front yard setback, and (3) a 1' variance from the 7' maximum fence height along the rear and west property lines on property located at 1510 Edgewater Rd.

Ms. Brownell presented the staff report. The applicant wants to build a house on the property and place 10' fence along the east property line to buffer noise from Loop 322. They also requested an 8' fence around the remainder of the property. The street is a drainage channel that dead ends and access to the lot would be from the alley so a fence in front would not have the same potential problems in the front that it would on most other streets in terms of visibility and neighborhood character. There is a significant drop in elevation from the front of the lot to the street. The three variances are to accommodate a fence as proposed by the applicant.

Staff recommended: (1) denial since it does not meet the criteria, (2) approval with the condition that it be for the east property boundary only and a maximum of 7' in height, and (3) denial since the request does not meet the required criteria. One comment form was returned in favor and one in opposition. Mr. Waldraff asked if Loop 322 itself is a hardship. Ms. Brownell said no, there are numerous lots in the area that are adjacent to Loop 322 with fences 6 or 7 feet in height.

Mr. Hay opened the public hearing. Michael Malm, agent, spoke in favor of the request. He indicated that there is a misunderstanding about the request. They want an 8' fence around the back yard and they only want it to extend into the front along Loop 322. The 10 feet would be to keep the fence at an even height along the top as the front of the lot drops in elevation. Either 7 or 8 feet would be fine along the alley and the west side. Mr. Hay said he is ok with 8 feet and that there is precedence for that along Winters Freeway near S. Willis St. Mr. Malm said the land slopes dramatically and there is no development east of the property. There would be no fence across the front of the property. The City does not maintain the alley between the property and Loop 322 and they don't intend to use it. Mr. Hay asked where the access is planned. Mr. Malm said from the rear alley and that they never have requested to cut the curb in front.

Mr. Hay closed the public hearing and stated that they should consider each case individually. The first one would be one foot variance except at the southern end of the lot where it would be 10 feet due to the drop off. Mr. Cook reiterated that there is quite a bit of drop. Mr. Santee stated that it sounds like the intent is to maintain an 8' level fence. Mr. Hay said they could approve a 1' variance up to the front setback line. For the second request staff would agree. The applicant said that around the rest of the yard they could live with the 7 feet, so they should not approve the third request.

(1) Mr. Waldruff made a motion to approve request #1 with a maximum height of 8 feet based on the following findings:

Unique Conditions of the Property: The property is adjacent to Loop 322 and this would be an added buffer.

Hardship From Strict Interpretation: The property is against Loop 322 where significant noise could be expected.

Effect on Public Health, Safety, and Welfare: There are no negative effects on public health, safety, or welfare.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

(2) Mr. Waldruff made a motion to approve request #2 along the east property line only and to allow the fence to be built to maintain an effective height of 8 feet to the front property line based on the following findings:

Unique Conditions of the Property: The portion of Edgewater Road adjacent to the parcel is designed primarily for use as a drainage channel to direct water into the large drainage structures at the end of the road. Because of the location of the highway and the drainage features, no development will ever occur on the east side of the subject parcel. This eliminates the necessity for a reduction in fence height to promote visibility as it approaches the front property line.

Hardship From Strict Interpretation: The property is against Loop 322 where significant noise could be expected.

Effect on Public Health, Safety, and Welfare: There are no negative effects on public health, safety, or welfare.

Ms. Coleman seconded the motion which passed by a vote of 5 in favor, 0 opposed.

(3) Mr. Waldruff made a motion to deny request #3 based on the following findings:

Unique Conditions of the Property: There are no peculiarities pertaining to the request for additional fence height along the rear and western side boundaries.

Hardship From Strict Interpretation: No other properties in the immediate area appear to have fences over 7 feet in height, which would make the subject parcel look out of place if it had 8-foot fencing along the rear and western boundaries.

Effect on Public Health, Safety, and Welfare: There are no negative effects on public health, safety, or welfare.

Ms. Coleman seconded the motion which passed by a vote of 5 in favor, 0 opposed.

Agenda Item #4,

Mr. Armstrong reminded the Board that they must complete open meetings training by the end of the year if they were appointed before 2006 and within 90 days of their appointment if they were appointed this year.

There being no further business, the meeting was adjourned at 10:40 A.M.

Approved: _____, Chairman
